

Miller v. Williamson, that a tenant for life of money has no right to receive and receipt for it, and any one dealing with the executor, on the foot of such a transfer by him conveying the whole interest in the fund, will, as well as the executor, be liable to the legatee in remainder.

Rights of sureties and co-executors as to apprehended losses.—As to the rights of the surety of an executor in case of apprehended loss by his acts, see Code, Art. 91, secs. 1 and 2,³⁰ which differ from the original Act of 1798, ch. 101, sub-ch. 14, sec. 11. The latter was construed in Burch v. Scott *supra*. And as to apprehended losses by one executor from the acts of his co-executor, see Code, Art. 93, sec. 241³¹ (1816, ch. 203, sec. 4), and sec. 243³² (1831, ch. 315, sec. 7); Beall v. Hilleary, 1 Md. 186,³³ where it was held that one executor cannot compel his co-executor, in equity, to pay a claim alleged to be due by the latter to the estate; Hesson v. Hesson, 14 Md. 8, where it was held that an executor and legatee may appeal from an order of the Orphans Court passing a separate account of the co-executor, wherein the latter is allowed a large claim against the estate, and that an allegation that such claim is false and spurious is equivalent to a demand for full proof of it.

What are acts of *devastavit*?—Under these Statutes, whatever act of the executor would have made him personally liable for the payment of the demand *de bonis propriis* makes his personal estate liable in the hands of his executor or administrator. The cases commonly put of a *devastavit* by executors are of direct abuse, as by selling or converting the goods to their own use,³⁴ and of such acts of mismanagement and negligence as

³⁰ Code 1911, Art. 90, secs. 1 and 2. When application is made under sec. 1 to require counter security it is the imperative duty of the Orphans Court to so order, the word "may" in the section being mandatory. Sifford v. Morrison, 63 Md. 14. See further on the construction of these sections, March v. Fidelity Co., 79 Md. 309; Martin v. Jones, 87 Md. 46; Wright v. Williams, 93 Md. 68; Yakel v. Yakel, 96 Md. 245.

³¹ Code 1911, Art. 93, sec. 246. An appeal lies from an order of the Orphans Court revoking the letters of a joint administrator upon application of his co-administrator under this section. Forney v. Shriner, 60 Md. 419; Macgill v. McEvoy, 85 Md. 290. Cf. Yakel v. Yakel, 96 Md. 244.

³² Code 1911, Art. 93, sec. 248 and note 10 *supra*.

³³ See Whiting v. Whiting, 64 Md. 160; Linthicum v. Polk, 93 Md. 93.

³⁴ See Bennett v. Rhodes, 58 Md. 82; Miller v. Miller, 73 Md. 442; Woolley v. Price, 86 Md. 176; Morrow v. Fidelity Co., 100 Md. 256; Alexander v. Fidelity Co., 108 Md. 541; Houck v. Houck, 112 Md. 122. Unauthorized purchase or investment. Seldner v. McCreery, 75 Md. 292. The failure of the executor to keep the funds of his estate ear-marked and separate from his own is at most a mere technical *devastavit*. He will not be held to have wasted the assets if he has in hand or under his immediate control a sufficient sum to meet all his liabilities as executor. State v. Cheston, 51 Md. 352; Kirby v. State, 51 Md. 393; Smith v. Michael, 113 Md. 22.